

ACTION: Notice of Proposed Rulemaking
Title 22, California Code of Regulations

SUBJECT: Drinking Water Primary Maximum Contaminant Level Revisions for Atrazine, Cyanide, Ethylbenzene, Methoxychlor, Oxamyl, and 1,2,4-trichlorobenzene, **R-16-01**

PUBLIC PROCEEDINGS: Notice is hereby given that the California Department of Health Services will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions relevant to the action described in this notice. Any written statements, arguments or contentions must be received by the Office of Regulations, Department of Health Services, 714 P Street, Room 1000, P.O. Box 942732, Sacramento, CA 94234-7320, by 5 p.m. on December 4, 2002, which is hereby designated as the close of the written comment period. It is requested but not required that written statements, arguments or contentions sent by mail or hand-delivered be submitted in triplicate.

Comments by FAX (916-657-1459) or email (regulation@dhs.ca.gov) must be received before 5:00 p.m. on the last day of the public comment period. All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes in the regulation text on which additional comments may be solicited.

CONTACTS: In any of the following inquiries, please identify the action by using the Department regulation control number, R-16-01:

1. In order to request a copy of this regulation package be sent to you, please call (916) 654-0381 or email regulation@dhs.ca.gov.
2. Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Alexis Milea of the Division of Drinking Water and Environmental Management at (510) 540-2177.

3. All other inquiries concerning the action described in this notice may be directed to Charles E. Smith of the Office of Regulations at (916) 657-0730, or to the designated backup contact person, Allison Branscombe, Chief of the Office of Regulations, at (916) 657-0692.

Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW: All suppliers of domestic water to the public are subject to regulations adopted by the U.S. Environmental Protection Agency (EPA) under the Safe Drinking Water Act (42 U.S.C. 300f et seq.) as well as by the California Department of Health Services (Department) under the California Safe Drinking Act (Sections 4040.1 and 116300-116750, Health and Safety Code [H&S Code]). California has been granted "primacy" for the enforcement of the Federal Act. In order to receive and maintain primacy, states must promulgate regulations that are no less stringent than the federal regulations.

In accordance with federal regulations, California requires public water systems to sample their sources and have the samples analyzed for inorganic and organic substances in order to determine compliance with drinking water standards, also known as maximum contaminant levels (MCLs). Primary MCLs are based on health protection, technical feasibility, and costs. The water supplier must notify the Department and the public when a primary MCL has been violated and take appropriate action.

Pursuant to section 116365(g) of the H&S Code, the Department is mandated to periodically review primary MCLs. Since a major criteria for determining whether a revision should be made relates to current knowledge about contaminant risk, the Department has reviewed the existing MCLs within the context of public health goals (updated risk assessments) as they have been completed. The Cal/EPA Office of Environmental Health Hazard Assessment (OEHHA) has now completed public health goals (PHGs) for a number of the existing MCL contaminants. The Department conducted an initial screening to determine whether any of these MCLs merited a more comprehensive review.

In two separate lists in 1998 and 1999, the Department designated a number of chemicals selected for a more comprehensive review by this initial screening: Cyanide, ethylbenzene, oxamyl, atrazine, methoxychlor, and 1,2,4-trichlorobenzene were among those selected because the PHGs were below the MCLs and the PHGs reflected changes in perceived risk to public health.

The Department used the "Procedure for Reviewing Maximum Contaminant Levels (MCLS) for Possible Revision" that was finalized in August 1999 for its MCL reviews.

Review of the occurrence data in the Department's Water Quality Monitoring database for each of the chemicals listed above indicated that there were no detects above the PHGs, except one that was never confirmed. Several of the chemicals had no detects above the detection levels for purposes of reporting (DLRs) either (atrazine, methoxychlor and oxamyl). Thus, revising these MCLs would not result in any fiscal impact on water systems, but would provide greater health protection should a detection occur in the future. Therefore, the Department proposes to amend chapter 15, division 4, title 22 of the California Code of Regulations as follows:

- Table 64431-A would be amended to reduce the MCL for cyanide from 0.2 to 0.15 mg/L, to provide greater public health protection.
- Table 64444-A would be amended to reduce the MCLs for ethylbenzene and 1,2,4-trichlorobenzene from 0.7 and 0.07 mg/L to 0.3 and 0.005 mg/L, respectively, to provide greater health protection.
- Table 64444-B would be amended to reduce the MCLs for atrazine, methoxychlor, and oxamyl from 0.003, 0.04 and 0.2 mg/L to 0.001, 0.03, and 0.05 mg/L, respectively, to provide greater health protection.
- Table 64445.1-A would be amended to reduce the detection limit for reporting purposes (DLR) for atrazine from 0.001 mg/L to 0.0005 mg/L to provide for monitoring below the proposed MCL.
- Sections 64468.1, 64468.2 and 64468.3, article 19, which contain the language used to notify the public when there are MCL violations, would be amended to update the MCL levels in the text for each of the chemicals for which the MCL would be reduced.

The net effect would be that community and nontransient-noncommunity water systems would be required to comply with more stringent MCLs for cyanide, ethylbenzene, 1,2,4-trichlorobenzene, atrazine, methoxychlor, and oxamyl.

None of the proposed amendments would affect California's primacy status, because the net affect of these amendments is that the state's regulation would be more stringent than the federal, which is allowed.

In addition to the above amendments, the Health and Safety Code citations in the authority/reference NOTES for sections 64468.1, 64468.2, and 64468.3 would be amended for consistency with the relevant sections of the Health and Safety code as currently codified.

AUTHORITY: Sections 100275, 116350, 116365, 116375, and 116450, Health and Safety Code.

REFERENCE: Sections 116300 through 116750, Health and Safety Code.

FISCAL IMPACT ESTIMATE:

A. Fiscal Effect on Local Government: No fiscal impact exists.

- B. Fiscal Effect on State Government: No fiscal impact exists.
- C. Fiscal Effect on Federal Funding of State Programs: No fiscal impact exists.
- D. All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

DETERMINATIONS: The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has made an initial determination that the regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Department's review of the occurrence data in the Water Quality Monitoring database for each of the chemicals listed above indicated that there were no detects above the PHGs, except one that was never confirmed. Several of the chemicals had no detects above the detection levels for purposes of reporting (DLRs) either (atrazine, methoxychlor and oxamyl). Hence, there is no incremental fiscal impact associated with this regulation.

The Department has determined that the regulations will not significantly affect the following:

1. The creation or elimination of jobs within the State of California. The requirements summarized above should not have any affect in this area in that there would not be any change in water system or regulatory personnel needed for compliance with the new requirements.
2. The creation of new businesses or the elimination of existing businesses within the State of California. The nature of the water industry is such that the proposed regulation will not result in the creation or elimination of water systems. The impact of these regulations would be insignificant.
3. The expansion of businesses currently doing business within the State of California. Since water system size is basically a function of the number of service connections (consumers) served, the proposed regulations should not have any affect on expansion.

The Department has determined that the proposed regulations would not affect small business, since Government Code Chapter 3.5, Article 2, Section 11342.610 excludes drinking water utilities from the definition of small business.

The Department has determined that the regulations will have no impact on housing costs.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS: The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. A copy of the initial statement of reasons and a copy of the text of the proposed regulations are available upon request by writing to the Office of Regulations at the address noted above, which address will also be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). Additionally, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations at the address noted above. Materials regarding the proposed regulations that are available via the Internet may be accessed at <http://www.dhs.ca.gov/regulation/>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT: The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

ADDITIONAL STATEMENTS AND COMMENTS: In accordance with Government Code Section 11346.5(a)(13) the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

No hearing has been scheduled; however any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8.

Sign language interpreting services at a public hearing or other reasonable accommodation will be provided upon request. Such request should be made no later than 21 days prior to the close of the written comment period, and addressed to the Office of Civil Rights within the Department of Health Services by phone (916-657-1411); FAX (916-657-0153); TDD (916-657-2861); or email (civilrights-ra@dhs.ca.gov).

DEPARTMENT OF HEALTH SERVICES

R-16-01

Dated: September 10, 2002